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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2029 Session of  
2019

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INTRODUCED BY ISAACSON, HELM, DELLOSO, FRANKEL, HILL-EVANS,  
HOWARD AND KINSEY, NOVEMBER 14, 2019

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REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 14, 2019

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AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and  
2 Judicial Procedure) of the Pennsylvania Consolidated  
3 Statutes, in sexual offenses, providing for the offense of  
4 fertility fraud; in particular rights and immunities,  
5 providing for damages in actions for fertility fraud; and, in  
6 registration of sexual offenders, further providing for  
7 applicability, for sexual offenses and tier system and for  
8 period of registration.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. Title 18 of the Pennsylvania Consolidated  
12 Statutes is amended by adding a section to read:

13 § 3133. Fertility fraud.

14 (a) Offense defined.--A person commits an offense if:

15 (1) the person is a health care practitioner as defined  
16 in section 103 of the act of July 19, 1979 (P.L.130, No.48),  
17 known as the Health Care Facilities Act;

18 (2) the person performs a fertility treatment on a  
19 patient by using human reproductive material; and

20 (3) the person knowingly uses:

21 (i) the person's own human reproductive material

1 without the informed written consent of the patient,  
2 resulting in the birth of a child; or

3 (ii) the human reproductive material of another  
4 person without the informed written consent of the  
5 patient, resulting in the birth of a child.

6 (b) Grading.--An offense under subsection (a) constitutes a  
7 felony of the third degree.

8 (c) Administrative penalty.--In addition to the penalty  
9 imposed under subsection (b), a person who commits a violation  
10 of subsection (a) shall be subject to permanent revocation of  
11 the person's license to practice medicine in this Commonwealth  
12 in accordance with applicable law.

13 (d) Definitions.--As used in this section, the following  
14 words and phrases shall have the meanings given to them in this  
15 subsection unless the context clearly indicates otherwise:

16 "Fertility treatment." A treatment or medical procedure  
17 intended to increase the likelihood of or result in a person  
18 successfully conceiving a child.

19 "Human reproductive material." A human spermatozoon or ovum  
20 or a human organism at any stage of development from fertilized  
21 ovum to embryo.

22 Section 2. Title 42 is amended by adding a section to read:  
23 § 8320.1. Damages in actions for fertility fraud.

24 (a) Right of action.--The patient, the patient's spouse or  
25 surviving spouse or the patient's child may commence a civil  
26 action against the person who commits a violation of 18 Pa.C.S.  
27 § 3133 (relating to fertility fraud).

28 (b) Limitations.--

29 (1) A civil action under this section must be commenced  
30 no later than:

1           (i) ten years after the 18th birthday of the child;

2           or

3           (ii) if subparagraph (i) does not apply, 20 years  
4           after the fertility treatment was provided.

5           (2) Notwithstanding paragraph (1), a civil action under  
6           this section may be commenced no later than five years after  
7           the earliest of the date on which:

8                   (i) the plaintiff first discovers evidence  
9                   sufficient to bring an action against the defendant  
10                   through DNA analysis;

11                   (ii) the plaintiff first becomes aware of the  
12                   existence of a recording that provides evidence  
13                   sufficient to bring an action against the defendant; or

14                   (iii) the defendant admits committing the offense  
15                   under 18 Pa.C.S. § 3133 to a law enforcement officer or  
16                   an appropriate court.

17           (c) Civil relief.--A plaintiff who prevails in an action  
18           under 18 Pa.C.S. § 3133 is entitled to recover from the  
19           defendant:

20                   (1) Actual damages, including the costs of the fertility  
21                   treatment, but not less than liquidated damages in excess of  
22                   \$10,000.

23                   (2) Punitive damages.

24                   (3) Reasonable attorney fees and other litigation costs  
25                   reasonably incurred.

26           (d) Construction.--Nothing in this section shall be  
27           construed to prohibit an individual from pursuing any other  
28           remedy provided by law.

29           (e) Definitions.--As used in this section, the following  
30           words and phrases shall have the meanings given to them in this

1 subsection unless the context clearly indicates otherwise:

2 "Fertility treatment." A treatment or medical procedure  
3 intended to increase the likelihood of or result in a person  
4 successfully conceiving a child.

5 "Human reproductive material." A human spermatozoon or ovum  
6 or a human organism at any stage of development from fertilized  
7 ovum to embryo.

8 Section 3. Section 9799.13 of Title 42 is amended by adding  
9 a paragraph to read:

10 § 9799.13. Applicability.

11 The following individuals shall register with the  
12 Pennsylvania State Police as provided in sections 9799.15  
13 (relating to period of registration), 9799.19 (relating to  
14 initial registration) and 9799.25 (relating to verification by  
15 sexual offenders and Pennsylvania State Police) and otherwise  
16 comply with the provisions of this subchapter:

17 \* \* \*

18 (10) An individual who has been convicted of fertility  
19 fraud under 18 Pa.C.S. § 3133(a)(3)(i) (relating to fertility  
20 fraud).

21 Section 4. Section 9799.14(b)(7) of Title 42 is amended to  
22 read:

23 § 9799.14. Sexual offenses and tier system.

24 \* \* \*

25 (b) Tier I sexual offenses.--The following offenses shall be  
26 classified as Tier I sexual offenses:

27 \* \* \*

28 (7) [(Reserved).] 18 Pa.C.S. § 3133(a)(3)(i) (relating  
29 to fertility fraud).

30 \* \* \*

1 Section 5. Section 9799.15(a) is amended by adding a  
2 paragraph to read:

3 § 9799.15. Period of registration.

4 (a) Period of registration.--Subject to subsection (c), an  
5 individual specified in section 9799.13 (relating to  
6 applicability) shall register with the Pennsylvania State Police  
7 as follows:

8 \* \* \*

9 (8) An individual subject to registration under section  
10 9799.13(10) shall register for no less than five years but no  
11 more than 10 years.

12 \* \* \*

13 Section 6. This act shall take effect in 60 days.